

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Chevalier et al.
Appl. No.	:	10/589,154
Filed	:	May 4, 2007
For	:	COLD GELLING PASTRY GLAZE BASED ON PECTIN
Examiner	:	Mukhopadhyay, Bhaskar
Group Art Unit	:	1789
Confirmation No	:	6783

**REQUEST FOR REFUND AND RESPONSE TO NOTICE OF IMPROPER REQUEST FOR
CONTINUED EXAMINATION**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This communication is in response to the Notice of Improper Request for Continued Examination (RCE) mailed **June 16, 2011** (The "Notice"). The Notice stated that continued examination under 37 CFR 1.114 did not apply to an application unless prosecution in the application was closed, and that if the RCE was accompanied by a reply to a non-final Office action, the reply would be entered and considered under 37 CFR 1.111.

In the present case, an RCE request and reply to the non-final Office Action mailed on November 17, 2010, were filed on February 23, 2011. Thus, Applicants respectfully request entry of this reply and consideration thereof under 37 CFR 1.111.

Appl. No. : **10/589,154**
Filed : **May 4, 2007**

Since the RCE request filed February 23, 2011 was improper, Applicants respectfully request a refund of the \$810 RCE fee to Deposit Account No 11-1410. Should there be any questions concerning this application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 24, 2011

By: /Neil S. Bartfeld/
Neil S. Bartfeld, Ph.D.
Registration No. 39,901
Agent of Record
Customer No. 20,995
(858) 707-4000

11456937
062111



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

20995 e 06/16/2011

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Paper No.

Application No.:	10/589,154 *10589154*	Date Mailed:	06/16/2011
First Named Inventor:	Chevalier, Olivier,	Examiner:	MUKHOPADHYAY, BHASKAR
Attorney Docket No.:	VANM199.010APC	Art Unit:	1789
Confirmation No.:	6783	Filing Date:	05/04/2007

Please find attached an Office communication concerning this application or proceeding.

Commissioner for Patents

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)	Application No. 10/589,154	Applicant(s) CHEVALIER ET AL.	
		Art Unit 1700	Date Mailed:

The request for continued examination (RCE) under 37 CFR 1.114 filed on 23 February, 2011 is improper for reason(s) indicated below:

1. ☐ Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
2. ☐ Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
3. ☒ Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
4. ☐ The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
5. ☐ The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
6. ☐ The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
7. ☐ The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date **on or after June 8, 1995** will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

A copy of this Notice MUST be returned with the reply.

Direct any questions concerning this notice to

/FELICIA R. FARMER/, Technology Center 1700

Telephone Number: (571)272-1005